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EXECUTIVE
Defending the West

Western Environmental Law Center

January 29, 2015

Via Certified Mail—Return Receipt Requested

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**Notice of Intent to Sue
FWPCA § 505 – 33 U.S.C. § 1365**

To whom it may concern:

This letter is to notify you of ongoing violations of the Clean Water Act (CWA) at the Rosebud strip mine, in Colstrip, Montana, owned and operated by Western Energy Company, Westmoreland Mining, LLC, and Westmoreland Coal Company (collectively, WEC Co). The Montana Environmental Information Center (MEIC) and the Sierra Club (collectively, "Citizens") are concerned about the continuing violations of the CWA at the Rosebud strip mine, which are causing and contributing to serious environmental problems in East Fork Armells Creek, Rosebud Creek, and their various tributaries. The substances that WEC Co is discharging in excessive quantities include settleable solids, total suspended solids, iron, total dissolved solids, sulfate, boron, and acidity. These pollutants are regulated by the CWA. WEC Co is also repeatedly violating fundamental requirements to fully and accurately monitor and report its pollution discharges in a timely fashion.

Pursuant to 33 U.S.C. § 1365(b), the Citizens hereby give notice of their intent to sue WECo in federal district court for its ongoing violations of the CWA upon expiration of the sixty day statutory waiting period, unless WECo brings itself into full compliance.

Factual Background

All violations mentioned herein have occurred, are occurring, and will continue to occur at the Rosebud strip mine located in Colstrip, Montana. The Rosebud strip mine is a 25,600 acre coal strip mine that provides 10-12 million tons of low-grade sub-bituminous coal annually to the adjacent, mine-mouth Colstrip Generating Station. WECo has been strip-mining coal at the Rosebud Mine since the mid-1970s. The sprawling mine has 151 outfalls from which it discharges pollutants into the headwaters of East Fork Armells Creek and Rosebud Creek. Receiving streams include East Fork Armells Creek, West Fork Armells Creek, Stocker Creek, Lee Coulee, Black Hank Creek, Donley Creek, Cow Creek, Spring Creek and Pony Creek, all waters of the United States subject to the provisions of the CWA. The Montana Department of Environmental Quality (MDEQ) has determined that the upper reach of East Fork Armells Creek is impaired, fails to support aquatic life, and that the probable cause of this impairment is surface coal mining. Similarly, MDEQ has found that the lower reach of East Fork Armells Creek is impaired, fails to support aquatic life, and that the probable cause of this impairment is surface coal mining.

Each of the mine's 151 outfalls is originally associated with a sediment pond or basin. WECo only monitors 20 outfalls for precipitation-driven discharges, the most common discharges. Influent flow to these ponds consists of groundwater infiltration and storm water. During the process of storm water runoff over soils disturbed by mining activities, suspended solids become entrained in the runoff. The sediment ponds or basins, each designed, constructed and maintained by WECo, are intended to collect mine drainage and provide an adequate amount of holding time to allow suspended solids to "settle" to the bottom of the pond, after which the remaining pond water, now free of the suspended particles that have settled to the bottom of the pond, is discharged to nearby waters. As documented by the numerous self-reported discharge permit violations noted below, WECo's settlement ponds do not always function as designed. Discharges from the settling ponds or basins may occur at discharge pipes or as pond overflow when precipitation events cause the volume of runoff contained in the pond to exceed the design capacity of the pond. Sediment entrained in storm water runoff that is discharged through pond overflow pipes or channels during a storm event would not necessarily have time to settle out in the sediment ponds or basins. Due to residual storm water or other mine drainage in the pond, discharges to waters of the United States occur during storm events that are smaller than precipitation events that the ponds are designed to contain.

Eight years after the original discharge permit expired, in 2012, MDEQ issued another draft permit, that significantly relaxed pollution limits and monitoring requirements. In response to WECo's new allegations that the streams into which the mine discharges are ephemeral in nature, MDEQ withdrew the draft permit and issued a modified draft permit later in 2012. The modified draft permit removed virtually all WQBELs from the permit, removed nearly all limitations for iron, selenium, and aluminum, and removed monitoring requirements from approximately 80% of outfalls. The modified draft permit is currently on appeal before the

Montana First Judicial District Court, Lewis and Clark County. *Montana Environmental Info. Ctr. & Sierra Club v. Montana Dep't of Environmental Quality & W. Energy Co.*, CDV 2012-1075 (filed Dec. 21, 2012).

Violations of Federal Law

Citizens allege that WECO has violated, is violating, and will continue to violate the CWA because WECO has discharged, and continues to discharge, pollutants into waters of the United States in excess of applicable permit limitations, specifically as set forth below. WECO, as the owners and operators of the Rosebud Mine, are "persons" subject to the requirements of the CWA. Section 301 of the CWA prohibits the discharge of any pollutant from a point source by any person except in compliance with a permit. Violation of a pollution limitation in a NPDES discharge permit constitutes violation of the CWA. *Alaska Cmty. Action on Toxics v. Aurora Energy Servs., LLC*, 765 F.3d 1169, 1171 (9th Cir. 2014). WECO's continued operation of the Rosebud Mine using current methods and manners, will cause WECO to continue to illegally discharge pollutants into waters of the United States in violation of its MPDES permit.

Discharge Events

Citizens believe and allege that a history of violations has continued from at least January 2010 (and for many years prior to 2010) and that violations are presently ongoing and continuous. These violations have occurred, are occurring, and will continue to occur on a regular basis during the operation of the Rosebud Mine. All violations not set forth specifically in this letter, including specific dates and locations of such discharges, are violations that are or should be known to WECO and may be included in any further legal actions by Citizens. All specific discharges discovered subsequent to the sending of this notice, of similar type and nature, whether occurring prior or subsequent to this notice, shall be included in the action in this case without the need for further notice under 33 U.S.C. § 1365(b). Such discharges may only be known to WECO and eyewitnesses who are yet to be determined because such discharges have not been, and are not, reported by WECO.

WECO has discharged, is discharging, and will continue to discharge pollutants into waters of the United States, specifically East Fork Armells Creek, West Fork Armells Creek, Stocker Creek, Lee Coulee, Black Hank Creek, Donley Creek, Cow Creek, Spring Creek and Pony Creek. In issuing its modified permit, MDEQ acknowledged that WECO had violated effluent limitations on multiple previous occasions: "The values given for several parameters in the Effluent Characteristics table do exceed the numeric effluent limitations in the previous permit. Due to the conditions at the time, DEQ used enforcement discretion and did not issue violation[] letters to the operator." (AR:993) MDEQ further acknowledged that it doubted WECO reported all unplanned discharges: "While 43 unplanned discharges have been documented in the past 20 years, DEQ is not confident that every precipitation-driven discharge was identified and sampled." (AR:1007). In the past five years MDEQ has documented numerous violations at the Rosebud strip mine, but has never brought any formal enforcement action or imposed any fine.

WECO has also admitted to previous violations of its MPDES permit. Specifically, in response to allegations that WECO has exceeded its permit limitations for boron, iron, sulfates,

total suspended solids, and total dissolved solids, WECO stated: "WECO admits that authorized discharges have occasionally exceeded limitations" for the aforementioned parameters. Answer ¶¶ 76-80. In spite of these admissions, neither DEQ nor EPA have initiated any formal enforcement actions against WECO.

DMR Violations

WECO's self-reported discharge monitoring reports show that it violated its pollution limitations on the following occasions:

- On or about February 18, 2010, WECO discharged total suspended solids (TSS) pollution into Stocker Creek from outfall 30 in excess of daily and monthly permit limits;
- On or about February 18, 2010, WECO discharged TSS pollution into Spring Creek from outfall 84 in excess of daily and monthly permit limits;
- On or about February 18, 2010, WECO discharged Iron pollution into Spring Creek from outfall 84 in excess of monthly permit limits;
- On or about February 18, 2010, WECO discharged TSS pollution into Black Hank Creek from outfall 96 in excess of daily and monthly permit limits;
- On or about February 18, 2010, WECO discharged iron pollution into Black Hank Creek from outfall 96 in excess of monthly permit limits;
- On or about February 18, 2010, WECO discharged TSS pollution into East Fork Armells Creek from outfall 21 in excess of monthly permit limits;
- On or about February 18, 2010, WECO discharged TSS pollution into Pony Creek from outfall 169A in excess of monthly permit limits;
- On or about February 18, 2010, WECO discharged pollution into Pony Creek from outfall 169A in excess of daily and monthly permit limits for pH;
- On or about February 18, 2010, WECO discharged TSS pollution into Pony Creek from outfall 170 in excess of monthly permit limits;
- On or about March 29, 2010, WECO discharged total dissolved solids (TDS) pollution into West Fork Armells Creek from outfall 100 in excess of monthly permit limits;
- On or about March 29, 2010, WECO discharged sulfate pollution into West Fork Armells Creek from outfall 100 in excess of monthly permit limits;
- On or about March 29, 2010, WECO discharged boron pollution into West Fork Armells Creek from outfall 100 in excess of monthly permit limits;
- On or about May 24, 2010, WECO discharged TSS pollution into Pony Creek from outfalls 165 in excess of monthly permit limits;
- On or about May 25, 2010, WECO discharged TSS pollution into Stocker Creek from outfall 30 in excess of daily and monthly permit limits;
- On or about May 25, 2010, WECO discharged Iron pollution into Stocker Creek from outfall 30 in excess of daily and monthly permit limits;
- On or about June 17, 2010, WECO discharged TSS pollution into West Fork Armells Creek from outfall 100 in excess of daily and monthly permit limits;
- On or about June 17, 2010, WECO discharged Iron pollution into West Fork Armells Creek from outfall 100 in excess of monthly permit limits;

- On or about June 17, 2010, WECO discharged TSS pollution into West Fork Armells Creek from outfall 105 in excess of daily and monthly permit limits;
- On or about June 17, 2010, WECO discharged Iron pollution into West Fork Armells Creek from outfall 1005 in excess of daily and monthly permit limits;
- On or about June 17, 2010, WECO discharged TSS pollution into Pony Creek from outfall 165 in excess of daily and monthly permit limits;
- On or about June 17, 2010, WECO discharged pollution into Pony Creek from outfall 165 in excess of daily and monthly permit limits for pH;
- On or about June 17, 2010, WECO discharged TSS pollution into Pony Creek from outfall 166 in excess of daily and monthly permit limits;
- On or about June 17, 2010, WECO discharged Iron pollution into Pony Creek from outfall 166 in excess of monthly permit limits;
- On or about June 17, 2010, WECO discharged pollution into Pony Creek from outfall 166 in excess of daily and monthly permit limits for pH;
- On or about July 23, 2010, WECO discharged TSS pollution into West Fork Armells Creek from outfall 100 in excess of daily and monthly permit limits;
- On or about July 23, 2010, WECO discharged Iron pollution into West Fork Armells Creek from outfall 100 in excess of daily and monthly permit limits;
- On or about July 23, 2010, WECO discharged TDS pollution into West Fork Armells Creek from outfall 100 in excess of monthly permit limits;
- On or about July 23, 2010, WECO discharged sulfate pollution into West Fork Armells Creek from outfall 100 in excess of monthly permit limits;
- On or about July 23, 2010, WECO discharged Boron pollution into West Fork Armells Creek from outfall 100 in excess of monthly permit limits;
- On or about May 10, 2011, WECO discharged TSS pollution into West Fork Armells Creek from outfall 105 in excess of daily permit limits;
- On or about May 10, 2011, WECO discharged Iron pollution into West Fork Armells Creek from outfall 105 in excess of daily permit limits;
- On or about May 11, 2011, WECO discharged Iron pollution into Pony Creek from outfall 167 in excess of daily and monthly permit limits;
- On or about May 20, 2011, WECO discharged TSS pollution into East Fork Armells Creek from outfall 59 in excess of daily and monthly permit limits;
- On or about May 20, 2011, WECO discharged Iron pollution into East Fork Armells Creek from outfall 59 in excess of daily and monthly permit limits;
- On or about May 20, 2011, WECO discharged TSS pollution into West Fork Armells Creek from outfall 95 in excess of daily permit limits;
- On or about May 20, 2011, WECO discharged TSS pollution into West Fork Armells Creek from outfall 100 in excess of daily permit limits;
- On or about May 20, 2011, WECO discharged Iron pollution into West Fork Armells Creek from outfall 100 in excess of daily permit limits;
- On or about May 20, 2011, WECO discharged TSS pollution into West Fork Armells Creek from outfall 105 in excess of daily permit limits;
- On or about May 20, 2011, WECO discharged Total Settleable Solids (TSS) pollution into West Fork Armells Creek from outfall 105 in excess of daily permit limits;

- On or about May 20, 2011, WECO discharged Iron pollution into West Fork Armells Creek from outfall 105 in excess of daily permit limits;
- On or about May 22, 2011, WECO discharged TSS pollution into Stocker Creek from outfall 30 in violation of daily and monthly permit limits;
- On or about May 22, 2011, WECO discharged Iron pollution into Stocker Creek from outfall 30 in violation of daily and monthly permit limits;
- On or about May 22, 2011, WECO discharged TSS pollution into Stocker Creek from outfall 32 in violation of daily and monthly permit limits;
- On or about May 23, 2011, WECO discharged TSS pollution into East Fork Armells Creek from outfall 21 in violation of daily and monthly permit limits;
- On or about May 23, 2011, WECO discharged Iron pollution into East Fork Armells Creek from outfall 21 in violation of monthly permit limits;
- On or about May 23, 2011, WECO discharged TDS pollution into West Fork Armells Creek from outfall 95A in excess of monthly permit limits;
- On or about May 23, 2011, WECO discharged sulfate pollution into West Fork Armells Creek from outfall 95A in excess of daily and monthly permit limits;
- On or about May 23, 2011, WECO discharged Boron pollution into West Fork Armells Creek from outfall 95A in excess of daily and monthly permit limits;
- On or about May 23, 2011, WECO discharged TSS pollution into West Fork Armells Creek from outfall 105 in excess of daily permit limits;
- On or about May 24, 2011, WECO discharged pollution into West Fork Armells Creek from outfall 104A in excess of daily and monthly permit limits for pH;
- On or about May 24, 2011, WECO discharged TSS pollution into West Fork Armells Creek from outfall 95 in excess of daily permit limits;
- On or about May 25, 2011, WECO discharged TSS pollution into East Fork Armells Creek from outfall 58 in violation of daily and monthly permit limits;
- On or about May 26, 2011, WECO discharged Total Settleable Solids (TSS) into East Fork Armells Creek from outfall 63 in violation of daily and monthly permit limits;
- On or about May 26, 2011, WECO discharged TSS pollution into East Fork Armells Creek from outfall 63 in violation of daily and monthly permit limits;
- On or about May 26, 2011, WECO discharged TDS pollution into East Fork Armells Creek from outfall 63 in violation of daily and monthly permit limits;
- In May 2011, WECO discharged TSS pollution into West Fork Armells Creek from outfall 95 in excess of monthly permit limits;
- In May 2011, WECO discharged Iron pollution into West Fork Armells Creek from outfall 95 in excess of monthly permit limits;
- In May 2011, WECO discharged TSS pollution into West Fork Armells Creek from outfall 100 in excess of monthly permit limits;
- In May 2011, WECO discharged Iron pollution into West Fork Armells Creek from outfall 100 in excess of monthly permit limits;
- In May 2011, WECO discharged TSS pollution into West Fork Armells Creek from outfall 105 in excess of monthly permit limits;
- In May 2011, WECO discharged Iron pollution into West Fork Armells Creek from outfall 105 in excess of monthly permit limits;

- On or about June 1, 2011, WECO discharged TSS pollution into East Fork Armells Creek from outfall 59 in excess of daily and monthly permit limits;
- On or about June 1, 2011, WECO discharged sulfate pollution into East Fork Armells Creek from outfall 59 in excess of daily and monthly permit limits;
- On or about June 1, 2011, WECO discharged TDS pollution into East Fork Armells Creek from outfall 59 in excess of daily and monthly permit limits;
- On or about June 1, 2011, WECO discharged TSS pollution into West Fork Armells Creek from outfall 95 in excess of daily permit limits;
- On or about June 1, 2011, WECO discharged Boron pollution into West Fork Armells Creek from outfall 95A in excess of daily permit limits;
- On or about June 1, 2011, WECO discharged sulfate pollution into West Fork Armells Creek from outfall 101 in excess of daily permit limits;
- On or about June 1, 2011, WECO discharged TDS pollution into West Fork Armells Creek from outfall 101 in excess of daily permit limits;
- On or about June 11, 2011, WECO discharged TSS pollution into Pony Creek from outfall 167 in excess of daily and monthly permit limits;
- On or about June 11, 2011, WECO discharged TDS pollution into Pony Creek from outfall 167 in excess of daily and monthly permit limits;
- On or about June 11, 2011, WECO discharged sulfate pollution into Pony Creek from outfall 167 in excess of daily and monthly permit limits;
- On or about June 11, 2011, WECO discharged Boron pollution into Pony Creek from outfall 167 in excess of daily and monthly permit limits;
- On or about June 17, 2011, WECO discharged TSS pollution into West Fork Armells Creek from outfall 95 in excess of daily permit limits;
- On or about June 17, 2011, WECO discharged TSS pollution into West Fork Armells Creek from outfall 105 in excess of daily and monthly permit limits;
- On or about June 17, 2011, WECO discharged Iron pollution into West Fork Armells Creek from outfall 105 in excess of daily and monthly permit limits;
- On or about June 24, 2011, WECO discharged TDS pollution into West Fork Armells Creek from outfall 95 in excess of daily permit limits;
- On or about June 24, 2011, WECO discharged sulfate pollution into West Fork Armells Creek from outfall 95 in excess of daily permit limits;
- On or about June 24, 2011, WECO discharged Boron pollution into West Fork Armells Creek from outfall 95 in excess of daily permit limits;
- On or about June 24, 2011, WECO discharged sulfate pollution into West Fork Armells Creek from outfall 100 in excess of daily permit limits;
- On or about June 24, 2011, WECO discharged TDS pollution into West Fork Armells Creek from outfall 100 in excess of daily permit limits;
- On or about June 29, 2011, WECO discharged Boron pollution into Stocker Creek from outfall 70 in excess of daily and monthly permit limits;
- On or about June 29, 2011, WECO discharged TDS pollution into Stocker Creek from outfall 70 in excess of monthly permit limits;
- On or about June 29, 2011, WECO discharged sulfate pollution into Stocker Creek from outfall 70 in excess of monthly permit limits;

- In June 2011, WECO discharged Boron pollution into West Fork Armells Creek from outfall 95 in excess of monthly permit limits;
- In June 2011, WECO discharged sulfate pollution into West Fork Armells Creek from outfall 95 in excess of monthly permit limits;
- In June 2011, WECO discharged TDS pollution into West Fork Armells Creek from outfall 95 in excess of monthly permit limits;
- In June 2011, WECO discharged TSS pollution into West Fork Armells Creek from outfall 95 in excess of monthly permit limits;
- In June 2011, WECO discharged TDS pollution into West Fork Armells Creek from outfall 95A in excess of monthly permit limits;
- In June 2011, WECO discharged sulfate pollution into West Fork Armells Creek from outfall 95A in excess of monthly permit limits;
- In June 2011, WECO discharged Boron pollution into West Fork Armells Creek from outfall 95A in excess of monthly permit limits;
- In June 2011, WECO discharged TDS pollution into West Fork Armells Creek from outfall 100 in excess of monthly permit limits;
- In June 2011, WECO discharged sulfate pollution into West Fork Armells Creek from outfall 100 in excess of monthly permit limits;
- In June 2011, WECO discharged sulfate pollution into West Fork Armells Creek from outfall 101 in excess of monthly permit limits;
- In June 2011, WECO discharged TDS pollution into West Fork Armells Creek from outfall 101 in excess of monthly permit limits;
- On or about July 1, 2011, WECO discharged TSS pollution into East Fork Armells Creek from outfall 64 in excess of daily and monthly permit limits;
- On or about July 1, 2011, WECO discharged TSeS pollution into East Fork Armells Creek from outfall 64 in excess of daily permit limits;
- On or about July 1, 2011, WECO discharged TSS pollution into Stocker Creek from outfall 70 in excess of daily and monthly permit limits;
- On or about July 1, 2011, WECO discharged TDS pollution into Stocker Creek from outfall 70 in excess of monthly permit limits;
- On or about July 1, 2011, WECO discharged sulfate pollution into Stocker Creek from outfall 70 in excess of monthly permit limits;
- On or about July 1, 2011, WECO discharged Boron pollution into Stocker Creek from outfall 70 in excess of daily and monthly permit limits;
- On or about July 15, 2011, WECO discharged TSeS pollution into West Fork Armells Creek from outfall 100 in excess of daily permit limits;
- On or about July 15, 2011, WECO discharged TSS pollution into West Fork Armells Creek from outfall 100 in excess of daily and monthly permit limits;
- On or about July 15, 2011, WECO discharged Iron pollution into West Fork Armells Creek from outfall 100 in excess of monthly permit limits;
- On or about July 15, 2011, WECO discharged TSeS pollution into West Fork Armells Creek from outfall 105 in excess of daily permit limits;
- On or about July 15, 2011, WECO discharged TSS pollution into West Fork Armells Creek from outfall 105 in excess of monthly permit limits;

- On or about July 15, 2011, WECO discharged Iron pollution into West Fork Armells Creek from outfall 105 in excess of monthly permit limits;
- On or about July 15, 2011, WECO discharged pollution into West Fork Armells Creek from outfall 105 in excess of daily and monthly permit limits for pH;
- On or about August 1, 2011, WECO discharged TDS pollution into East Fork Armells Creek from outfall 64 in excess of monthly permit limits;
- On or about August 1, 2011, WECO discharged sulfate pollution into East Fork Armells Creek from outfall 64 in excess of monthly permit limits;
- On or about August 1, 2011, WECO discharged TDS pollution into Stocker Creek from outfall 70 in excess of monthly permit limits;
- On or about August 1, 2011, WECO discharged sulfate pollution into Stocker Creek from outfall 70 in excess of monthly permit limits;
- On or about August 1, 2011, WECO discharged Boron pollution into Stocker Creek from outfall 70 in excess of daily and monthly permit limits;
- On or about September 1, 2011, WECO discharged TDS pollution into East Fork Armells Creek from outfall 64 in excess of monthly permit limits;
- On or about September 1, 2011, WECO discharged sulfate pollution into East Fork Armells Creek from outfall 64 in excess of monthly permit limits;
- On or about September 1, 2011, WECO discharged Boron pollution into Stocker Creek from outfall 70 in excess of daily and monthly permit limits;
- On or about September 1, 2011, WECO discharged TDS pollution into Stocker Creek from outfall 70 in excess of monthly permit limits;
- On or about September 1, 2011, WECO discharged sulfate pollution into Stocker Creek from outfall 70 in excess of monthly permit limits;
- On or about October 4, 2011, WECO discharged TSS pollution into East Fork Armells Creek from outfall 64 in excess of monthly permit limits;
- On or about October 4, 2011, WECO discharged TDS pollution into East Fork Armells Creek from outfall 64 in excess of monthly permit limits;
- On or about October 4, 2011, WECO discharged Boron pollution into Stocker Creek from outfall 70 in excess of daily and monthly permit limits;
- On or about October 4, 2011, WECO discharged TDS pollution into Stocker Creek from outfall 70 in excess of monthly permit limits;
- On or about October 4, 2011, WECO discharged sulfate pollution into Stocker Creek from outfall 70 in excess of monthly permit limits;
- On or about December 1, 2011, WECO discharged TDS pollution into East Fork Armells Creek from outfall 64 on multiple occasions in excess of monthly permit limits;
- On or about June 30, 2014, WECO discharged TSS pollution into Stocker Creek from outfall 32 in excess of daily permit limits. Because the permit in force at the time had "representative monitoring" by which one outfall represented the discharge of five, this violation at outfall 32 indicated violations at four other outfalls as well;
- On or about August 22-24, WECO discharged TSeS pollution into East Fork Armells Creek from outfall 21 in excess of daily permit limits;

Monitoring and Reporting Violations

- On or about July 23, 2010, WECO discharged pollution from outfall 105 but failed to monitor or sample the discharge;
- As reported in Montana Department of Environmental Quality's Inspection Report dated January 12, 2011, WECO discharged pollution from outfall 95A in 2010 but failed to monitor or sample the discharge. The inspection report does not state the exact date on which the discharge occurred but indicates that WECO reported the non-compliance via telephone call;
- As reported in Montana Department of Environmental Quality's Inspection Report dated January 12, 2011, WECO discharged pollution from outfall 165 following a storm in 2010 but failed to monitor or sample the discharge;
- As reported in Montana Department of Environmental Quality's Inspection Report dated January 12, 2011, WECO discharged pollution from outfall 166 following a storm in 2010 but failed to monitor or sample the discharge;
- On or about May 31, 2011, WECO discharged pollution from outfall 9A but failed to monitor or sample the discharge;
- On or about May 31, 2011, WECO discharged pollution from outfall 119 but failed to monitor or sample the discharge;
- On or about June 2, 2011, WECO discharged pollution from outfall 143 but failed to monitor or sample the discharge.
- On or about June 3, 2011, WECO discharged pollution from outfall 83 but failed to monitor or sample the discharge.
- On or about June 3, 2011, WECO discharged pollution from outfall 84 but failed to monitor or sample the discharge.
- On or about June 6, 2011, WECO discharged pollution from outfall 112 but failed to monitor or sample the discharge.
- On or about June 6, 2011, WECO discharged pollution from outfall 112A but failed to monitor or sample the discharge.
- On or about June 27, 2011, WECO discharged pollution from outfall 77 but failed to monitor or sample the discharge;
- On or about July 15, 2011, WECO discharged pollution from outfall 101 but failed to monitor or sample the discharge;
- On or about July 15, 2011, WECO discharged pollution from outfall 104A but failed to monitor or sample the discharge;
- On or about July 18, 2011, WECO discharged pollution from outfall 30 but failed to monitor or sample the discharge;
- On or about July 18, 2011, WECO discharged pollution from outfall 84 but failed to monitor or sample the discharge;
- On or about July 18, 2011, WECO discharged pollution from outfall 85 but failed to monitor or sample the discharge;
- On or about July 18, 2011, WECO discharged pollution from outfall 86 but failed to monitor or sample the discharge;
- On or about July 18, 2011, WECO discharged pollution from outfall 165 but failed to monitor or sample the discharge;
- On or about July 18, 2011, WECO discharged pollution from outfall 167 but failed to monitor or sample the discharge;

- On or about July 18, 2011, WEC Co discharged pollution from outfall 169 but failed to monitor or sample the discharge;
- On or about July 19, 2011, WEC Co discharged pollution from outfall 80 but failed to monitor or sample the discharge;
- On or about July 19, 2011, WEC Co discharged pollution from outfall 82 but failed to monitor or sample the discharge;
- During the month of July 2011, WEC Co discharge pollution from outfall 80 but failed to monitor or sample the discharge;
- During the month of July 2011, WEC Co discharge pollution from outfall 82 but failed to monitor or sample the discharge;
- During the month of July 2011, WEC Co discharge pollution from outfall 101 but failed to monitor or sample the discharge;
- During the month of July 2011, WEC Co discharge pollution from outfall 104A but failed to monitor or sample the discharge;
- During the month of July 2011, WEC Co discharge pollution from outfall 112 but failed to monitor or sample the discharge;
- During the month of July 2011, WEC Co discharge pollution from outfall 169 but failed to monitor or sample the discharge;
- On a separate occasion during the month of July 2011, WEC Co discharge pollution from outfall 30 but failed to monitor or sample the discharge;
- On a separate occasion during the month of July 2011, WEC Co discharge pollution from outfall 84 but failed to monitor or sample the discharge;
- On a separate occasion during the month of July 2011, WEC Co discharge pollution from outfall 85 but failed to monitor or sample the discharge;
- On a separate occasion during the month of July 2011, WEC Co discharge pollution from outfall 86 but failed to monitor or sample the discharge;
- On a separate occasion during the month of July 2011, WEC Co discharge pollution from outfall 165 but failed to monitor or sample the discharge;
- On a separate occasion during the month of July 2011, WEC Co discharge pollution from outfall 167 but failed to monitor or sample the discharge;
- On or about December 10, 2012, WEC Co discharged pollution into East Fork Armells Creek from outfall 21 but failed to test for TSS pollution in violation of its permit;
- On or about December 17, 2012, WEC Co discharged pollution into East Fork Armells Creek from outfall 21 but failed to test for TSS pollution in violation of its permit;
- On or about June 14, 2013, WEC Co discharged pollution into West Fork Armells Creek from outfall 105 but failed to monitor or sample the discharge;
- On or about May 18, 2014, WEC Co discharged pollution into East Fork Armells Creek from outfall 21 but failed to collect a sample within 30 minutes of the discharge;

Other Violations

- On or about August 24, 2010, WEC Co had not installed a required sediment control trap in Area B East. WEC Co did not install this sediment control trap for over one year, in violation of its permit requirement to properly operate and maintain all facilities and

systems of treatment control at all times; each day of noncompliance was a separate violation;

- On or about December 16, 2010, an inspection by the Montana Department of Environmental Quality discovered that WECO did not have means of flow from all designated outfalls as required by its permit;
- On or about April 28, 2012, or May 28, 2012, WECO failed to submit monitoring results to the Montana Department of Environmental Quality as required by its permit; this violation was noted by letter from Montana Department of Environmental Quality to WECO on June 17, 2012;
- On or about February 28, 2013, WECO failed to submit monitoring results to the Montana Department of Environmental Quality as required by its permit;
- On or about March 30, 2013, silt fences below Pond 004 in Area E were damaged and in need of repair; however, WECO failed to repair or maintain these silt fences for over six months in violation of its permit requirement to properly operate and maintain all facilities and systems of treatment control at all times; each day of noncompliance was a separate violation;
- On or about May 30, 2013, WECO discharged pollution from pond 80A into Spring Creek in violation of its permit because pond 80A is not a permitted outfall;
- On or about December 5, 2013, a staff gauge was knocked down at pond 46-A in Area C; however, WECO failed to repair or maintain the staff gauge for over three months in violation of its permit requirement to properly operate and maintain all facilities and systems of treatment control at all times; each day of noncompliance was a separate violation;
- On or about May 30, 2013, pond 80A breached and discharged pollution into Spring Creek; however, WECO failed to repair the breach until over four months later in violation of its permit requirement to properly operate and maintain all facilities and systems of treatment control at all times; each day of noncompliance was a separate violation;
- On or about July 17, 2013, numerous silt fences were in need of repair and maintenance in Area C North; however, WECO failed to repair or maintain these silt fences for over two months in violation of its permit requirement to properly operate and maintain all facilities and systems of treatment control at all times; each day of noncompliance was a separate violation;
- On or about November 19, 2013, numerous silt fences were damaged and in need of repair and maintenance in Area C North; however, WECO failed to repair or maintain these silt fences for over two months in violation of its permit requirement to properly operate and maintain all facilities and systems of treatment control at all times; each day of noncompliance was a separate violation.

Actions to be Taken & Civil Penalties

Absent cessation of the unlawful discharges, the Citizens intend, at the close of the sixty (60) day notice period, to file a citizen suit under §505 of the Clean Water Act, 33 U.S.C. §1365, against WECO, seeking injunctive relief, remedial relief, declaratory relief, and civil penalties for each permit violation over the past five (5) years and sixty (60) days from the date of this notice relating to the illegal discharges through the date of this letter and all violations that occur

subsequent to the date of this letter, plus costs, attorney and expert witness fees, and such other relief as may be appropriate. The civil penalties sought will be for the applicable statutory maximum for each violation, presently \$37,500 per day for each violation. 33 U.S.C. §1319(d) and 40 C.F.R. §19 and §19.4 Table 1 (or as otherwise provided by federal regulations). Civil penalties are mandatory once violations are found. 33 U.S.C. §1319(c); *Leslie Salt Co. v. United States*, 55 F.3d 1388, 1396 (9th Cir. 1995) (civil penalties under Clean Water Act are mandatory, not discretionary). Violations of monthly average pollution limits constitute a violation for each day of the month in which the violation occurred. *United States v. Smithfield Foods, Inc.*, 191 F.3d 516, 527 (4th Cir. 1999). Here, WECO has committed approximately 3,981 violations over the past five years.

Persons Giving Notice

The name, address, and phone number of the persons giving notice of intent to file a citizen lawsuit under the CWA are:

Montana Environmental Information Center
P.O. Box 1184
Helena, MT 59624
(406) 443-2520

Sierra Club
85 Second Street, Second Floor
San Francisco, CA 94105
(415) 977-5610

Montana Environmental Information Center (MEIC) is a 501(c)(3) nonprofit organization founded in 1973 with approximately 5,000 members throughout the United States and the State of Montana. MEIC is dedicated to the preservation and enhancement of the natural resources and natural environment of Montana and to the gathering and disseminating of information concerning the protection and preservation of the human environment through education of its members and the general public concerning their rights and obligations under local, state and federal environmental protection laws and regulations.

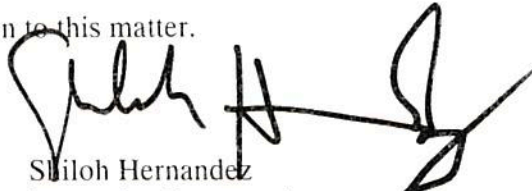
The Sierra Club is America's largest and most influential grassroots environmental organization, with more than 2.4 million members and supporters nationwide. In addition to creating opportunities for people of all ages, levels and locations to have meaningful outdoor experiences, the Sierra Club works to safeguard the health of our communities, protect wildlife, and preserve our remaining wild places through grassroots activism, public education, lobbying, and litigation. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth's resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives.

MEIC, Sierra Club, and their members have been and are being harmed by WEC's serial violations of the CWA. The groups' members live, work, and recreate on and near Rosebud Creek and Armells Creek and their tributaries downstream from the Rosebud strip mine. They fear contamination of drinking water, stock water, wildlife, and river water by pollution from the Rosebud strip mine. WEC's discharge of pollutants from the strip mine reduces their use and enjoyment of Rosebud Creek and Armells Creek and their tributaries.

The Citizens believe that a negotiated settlement of these numerous violations, codified through a court-approved consent decree, would be preferable to protracted litigation. For that reason, during the sixty (60 day notice period, we will be available to discuss effective remedies and actions which will assure WEC's future compliance with its permit, the CWA, and all applicable state water pollution control laws. If, however, we are unable to resolve the issues raised herein, the Citizens are prepared to file suit in the United States District Court for the District of Montana pursuant to section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), after sixty days from the date of this letter. As discussed above, this lawsuit will seek injunctive relief, appropriate civil penalties, fees and costs of litigation, and such other relief as the Court deems appropriate.

If you have any questions concerning this letter or the described violations, or if you believe that this notice is incorrect in any respect, please contact the undersigned counsel, the Western Environmental Law Center, at 406-204-4861.

Thank you for your prompt attention to this matter.



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